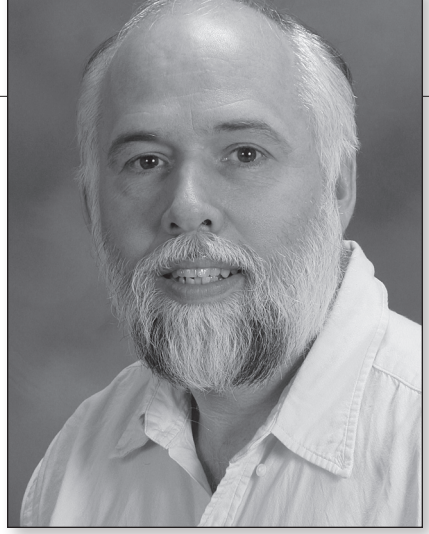

By Craig M. Pease

# The Hazards on Your Dinner Plate

The Environmental Law Institute's vision of "a healthy environment, prosperous economies, and vibrant communities founded on the rule of law" takes an admirably broad perspective, recognizing that environmental protection depends on creating and empowering strong economic and human social institutions. Yet the truth embodied in ELI's vision statement belies a critical ambiguity in the term "healthy environment."

The popular media nowadays provide us with endless accounts of scientific research on diet and health. As I write, one can read popular accounts of recent research on vitamin D, recommended dietary allowances, diet and attention-deficit hyperactivity disorder, diet and Alzheimer's disease, and on and on. What might otherwise have been topical now just gets buried in this research avalanche. Nevertheless, the environmental law community might want to step back, and take stock.

At one level, this is a simple story about two alternative ways of defining the "environment." The scientific literature explicitly recognizes diet and tobacco smoking as key environmental determinants of human health — for example, a Google Scholar search will quickly turn up literally thousands of scientific papers that explicitly refer to diet and/or tobacco as a part of the environment. To a scientist, the environment includes the food on your dinner plate. Yet rather strikingly, diet and tobacco are also outside the traditional purview of environmental law.

More than semantics is at issue here. Everyone is familiar with tobacco's toll. Less well known is the scientific literature summarized in Julian Peto's and William Willett's reviews, showing that diet's impact on mortality from heart disease and cancer is on par with that of tobacco. Many details remain to be worked out. But the overall pattern is unmistakable: The typical U.S. diet contains too many calories, and too few micronutrients. More pragmatically, we eat too much high fructose corn syrup, and too few fresh fruits and vegetables. Critically, as argued by Bruce Ames and his colleagues, the risks to human health from diet and tobacco (the broad definition) are at least an order of magnitude larger than the risks from classic environmental toxins such as pesticide residues in food or even dioxin (the narrow definition).

*Diet and tobacco are outside the traditional purview of environmental law*

Alas, the classic tools of environmental law and policy may well be ineffective in addressing the risks posed by tobacco and diet. Here a useful starting point is Paul Slovic and colleagues' research showing that humans consistently underestimate the risks of what we can control, and overestimate the risks of what we cannot (e.g., many perceive that driving a car is less hazardous than riding in an airplane piloted by someone else). Critically, we each control the fork that conveys the food on our dinner plate to our mouth. It seems to me that the perception that we control our own diet is unlikely to change, even though that control is far from absolute (e.g., former FDA commissioner David Kessler's recent book summarizing the biochemical and neurological evidence that fatty and salty foods are addictive, or the dearth of grocery stores selling fresh produce in many inner cities, or Bernard Gesch's stunning experimental evidence linking violent behavior to subclinical dietary deficiencies).

The classic tools of environmental law — government regulation and litigation — work best when applied to risks perceived as being beyond the control of individuals subjected to them (e.g., toxins released into the environment by polluters), and work less well with risks perceived to be within the control of individuals (e.g., the food on your dinner plate).

The command-and-control environmental statutes of the 1970s implicitly assume that the government needs to control hazards because individuals subjected to them cannot — else there would be no reason for the government to exert any control. Similarly, you can't sue yourself. If the hazard is a consequence of your own choices, there is nobody to sue.

Thus, I am skeptical that tweaking the existing tools of environmental law will solve the smoking and diet problems — consider the inability of labeling laws to stem, or even have much impact, on the ongoing tobacco and obesity epidemics.

If environmental advocacy is to effect real change, it must deploy its scarce resources to deliver the most effective solutions to our most pressing environmental problems. There is opportunity here for those pursuing more traditional environmental advocacy to reach out and form coalitions with those creating and employing a broader range of tools. Here it seems that any effective solution will involve not imposing control or assigning blame, but rather creating more and better choices.

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